IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 845 of 2002

Balabai Dinkar Sherekar(through jail)
adult, occ household
r/o Shejawalwadi Mouje
Maldan, Tal Patan, Dist.Satara .Appellant
vs
The State of Maharashtra. .. Respondent

Ms Sharmila Kaushik for appellant-appointed

Dr. F.R.Shaikh, Addl.P.P. for the respondent.

CORAM:V.G.PALSHIKAR,Acg.C.J. ,&
NISHITA MHATRE, J.
DATE: AUGUST 31, 2006.

ORAL JUDGMENT:(Per Palshikar Acg.C.J.)

1. This appeal by the original accused-appellant is directed against the order of conviction and sentence passed by the Additional Sessions Judge, Karad on 13th September, 2000. By the impugned order the learned Judge convicted the appellant under section 302 of the Indian Penal Code and sentenced him to suffer R.I for life and to pay a fine of Rs.5000. He also ordered that in default of payment of fine, the appellant should suffer five months S.I. This order is questioned by the original accused- appellant

before us on several grounds mentioned in the memo of appeal as also canvassed by the learned advocate appearing on behalf of the appellant-accused.

2. With the assistance of the learned counsel for the accused and the learned Additional Public Prosecutor, we have perused the record, scrutinised the material therein and have carefully reappreciated the evidence on record. The prosecution story, as disclosed by this reappreciation stated briefly is that the deceased Dinkar Krishna Sherekar was the husband of the accused Balabai Dinkar Sherekar. Their marriage was as usual and they had a son of about 19 years of age, who at the relevant was 13 years of age. On 26th March, 2000, police patil of the village Sabalewadi and Shejawalwadi lodged a complaint before the police around 7 a.m. in the morning. At that time he was informed by the Sarpanch that Dinkar Krishna Sherekar has been murdered in his own house. He, therefore, accompanied them to the house of Dinkar Krishna Sherekar and saw the dead body of Dinkar lying on the cot. There was big wound on his neck which was bleeding and an axe was lying under his hand. Inquiries were made and the police patil mentioned the present

appellant as the suspect in the complaint. Investigation into the unnatural death was undertaken. Statements were recorded, evidence was collected and ultimately the appellant was chargesheeted under section 302 of I.P.C. For causing intentional death of her husband.

3. The prosecution has examined 10 witnesses to prove its case in addition to the recovery of articles, which have been duly proved. The oral evidence consists 10 witnesses including the panch, who proved certain seizures effected by the police during the course of investigation. The documentary evidence proved certain reports of Chemical Analyser, who was requested to analyse the blood stains found on various clothes and articles. On appreciation of all this evidence that the learned trial Judge came to the conclusion of guilt as aforesaid.

4. This order of conviction and sentence is assailed by the learned advocate appearing on behalf of the accused on several grounds. According to her the evidence as is led by the prosecution is grossly inadequate to warrant conclusion of guilt of the accused. According to the

learned counsel even if the entire evidence is accepted in toto, it cannot be said with certainty that the needle of suspicion points only at the accused-appellant. There is no eye witness in this case and the entire case of the prosecution depends on circumstantial evidence. The submission, therefore, is that the prosecution has grossly failed to prove the chain of circumstantial evidence to support the order of conviction and hence the impugned order is unsustainable. These submissions are countered by the learned Additional Public Prosecutor, who contended that all the links are duly proved and the victim was killed by none else but his wife- present appellant. We have considered and reappreciated these contentions in the light of the evidence as has been reappreciated by us.

5. P.W. 10 is the police patil who lodged the FIR and has proved it. P.W.2 is the panch who has proved the inquest panchanama. P.W. 3 is a panch who proved the seizure of clothes of the accused. He has deposed that the clothes of the accused had stains which look like blood. P.W.4 is the neighbour of the victim and the appellant and she has deposed that on the night of 25th March, 2000 she saw the

accused, her son P.W.7 and others witnessing television programme at the house of P.W.5 Sambhaji and she also deposed that during this programme, which spread for three hours and more, accused went out of the house of Sambhaji towards her house and came back and every time spent 10 to 15 minutes in doing this. All that her deposition therefore proves that the accused presumably went her home thrice during the T.V. Show on three occasions and returned to the house of Sambhaji to further witness the T.V. Programme. To this very effect is the testimony of Sambhaji, P.W.5. He also speaks of the accused leaving his house on three occasions and coming back every time after 10 to 15 minutes. He states and which is not disputed by anybody that ultimately the accused slept in the verandah or just outside front door of this witness's house. From he evidence of these two persons namely P.W. 4 and 5 it is established that during the night of 25th March, 2000 the accused went to her house on three occasions. Beyond that the witnesses do not claim to have seen anything nor do they talk about anything else.

6. P.W.6 is the cousin of the victim and he has deposed about the bickerings that took place between the

accused and her husband. The prosecution seems to have examined him only to prove that the accused had some grudge against the victim. The question is whether harbouring such grudge is adequate enough motive for a person to kill her spouse.

7. P.W.7 is to some extent important witness. He is the son of the victim and the accused. He was 13 years old when the incident took place and was present with his mother-accused at the house of Sambhaji, P.W. 5 throughout. He states that when they went to watch T.V.programme his father was sleeping at the house. According to him his mother, present accused, told him that she is going home and went to the home and returned back 15 to 20 minutes thereafter. As there was advertisement on the T.V. she again left the house of Sambhaji and went to their home. Again she returned to the house of Sambhaji in about 15 to 20 minutes. Then the serial which they were watching was over and the movie Jan was being telecasted. Again the accused told the witness and went home and she returned after five minutes and thereafter she slept near the door of Sambhaji's house. The film Jan was over at 1.30 a.m. The accused therefore came

back home with the witness. The accused, according to the witness, went into the room and came out shouting, because of which people gathered and entered the 2nd room where the witness noticed that the victim was lying on the cot, having axe wound on his throat and blood spreading over the bed and wall. An axe was lying under the hand of the victim. On being asked, according to this witness, the accused told the people around that she had gone to the house of P.W. 5 Sambhaji and, therefore does not know as to how the assault took place. In the early morning the police patil came and reported the matter to the police who came thereafter and took the dead body and sent for post mortem to the hospital. He was extensively cross examined. In his cross examination he has stated that the victim used to drink liquor occasionally and on the night of the incident he had brought a bottle of liquor for his father and his father consumed half of the liquor in the presence of the witness. From the entire evidence of this witness it can be seen that he corroborates on all material points of P.W.5. Conversely it must be stated that the testimony of the P.W.4 is corroborated by the testimony of P.W. Nos 5 and 7 and P.W. 5 is corroborated by the

testimony of P.W. Nos 4 and 7. Appreciating this duly corroborated versions of three witnesses, what emerges is one fact that (l) During the television serial and the film, the accused and the witness P.W. 7 were in the house of Sambhaji P.W. 5; (2)The victim had consumed half bottle of liquor and was sleeping in the house; (3) That the accused thrice left the T.V programme presumably went to home and came back; (4) After the programme was over around l.30 a.m. Accused and the witness went to home and discovered the body of the victim lying in injured condition and bleeding and an axe nearby; and (5) Police were called and first information report was lodged.

8. P.W.8 is the medical officer who conducted the post mortem of the victim and had proved that the death of the victim was homicidal in nature. There is no reason how this finding can be questioned. P.W. 9 is the panch witness and P.W. 10 is the investigating officer. The total result of the investigation and evidence as reappreciated by us is that the prosecution has established that the death of the victim was homicidal and five other circumstances mentioned in the forgoing

paras i.e.(l) During the television serial and the film, the accused and the witness P.W. 7 were in the house of Sambhaji P.W. 5; (2)The victim had consumed half bottle of liquor and was sleeping in the house; (3) That the accused thrice left the T.V programme presumably went to home and came back; (4) After the programme was over around l.30 a.m. Accused and the witness went to home and discovered the body of the victim lying in injured condition and bleeding and an axe nearby; and (5) Police were called and first information report was lodged. To this two circumstances can be added and they are (6) the Chemical Analyser's report shows that the clothes of the accused were stained with blood; (7) the stains appear to have been washed and the stains were of blood group “O”; (8) the blood group of the victim was “O” and the blood group of the accused was “B”. It was on appreciation of these circumstances that the learned trial Judge recorded the order of conviction and sentence.

9. In our opinion, the entire evidence, even if, accepted without any demur gives rise and/or proves the following circumstances:

(l) During the television serial and the film, the accused and the witness P.W. 7 were in the house of Sambhaji P.W. 5; (2)The victim had consumed half bottle of liquor and was sleeping in the house; (3) That the accused thrice left the T.V programme presumably went to home and came back; (4) After the programme was over around l.30 a.m. Accused and the witness went to home and discovered the body of the victim lying in injured condition and bleeding and an axe nearby; and (5) Police were called and first information report was lodged; (6) the Chemical Analyser's report shows that the clothes of the accused were stained with blood; (7) the stains appear to have been washed and the stains were of blood group “O”; (8) the blood group of the victim was “O” and the blood group of the accused was “B” and (9) axe recovered from her house lying near the dead body was stained with blood and the blood group was reported to be “O” group; (10) the accused went out of the house of Sambhaji on three occasions and immediately came back on three occasions; (11) her blouse and saree were stained with blood and blood group was found to be “O”, which matches the blood group of the deceased and the same blood group was also found on the axe. However,

the prosecution has not taken care of taking finger prints on the axe to ascertain its user by the accused. Maximum that can be said from the above is that the accused was seen visiting her house repeatedly in which the victim was sleeping, thrice between a period of 3 and half hours. There is no evidence of the victim shouting in any manner.

10. Apart from the above, what really remained completely unanswered is the fact as to why the present accused- appellant went to the spot three times that evening, if she did commit the assault. If the assault was committed on the first occasion, why there was revisit by her on two more occasions. If the assault was committed on the second occasion, what was done on the first and third occasion. If the assault was committed on the third occasion, why were two visits made earlier. Assuming that assault was on any one of the three occasions, the evidence as led by the prosecution proves that the clothes of the accused were stained with blood and that the stains were apparently washed. If that be so, three witnesses who saw her leaving the house of Sambhaji and coming back on three occasions, yet no

one noticed any blood stains on it or any wet clothes showing immediate clinging of the clothes either of the blouse or of the saree. There is nothing on record therefore to show as to why the assault the assault took place, as to how it took place and how the blood stains on the clothes of the accused were not noticed on all three earlier occasions by any of the three witnesses. The explanation given by any such circumstance is not only reasonable but also is required to be accepted. A suggestion was made to the witness P.W.7 that when the victim was noticed in an injured condition by the wife-present accused, she shouted and in grief fell on the body of the victim, because of which blood which was there on the body of the deceased struck to her clothes also and that happened after the body was noticed in the presence of several others. That is why there is no explanation why washed, that is why the blood group was “O” and basically it was then that the blood stains came on the clothes of the victim and not when she assaulted him, whether on the first occasion, second occasion or third occasion.

11. The prosecution has failed to prove the time of death, as to when the assault was made and the prosecution has also failed to take finger prints of the accused, match them with those on the axe, though such facility was admittedly available in an area like Karad city. Therefore even if the entire evidence of the prosecution is accepted as a whole, all that has been proved is the homicidal death of the victim, blood stained clothes of the accused, coupled with her three visits to her home during the T.V. Telecast. These three circumstances, in our opinion, do not complete the chain of circumstances. In any event they are grossly inadequate to connect the accused to the crime. The learned trial Judge, therefore erred in not taking into consideration this vital aspect while appreciating the evidence. His order of conviction is therefore unsustainable.

12. In the result, therefore, the appeal succeeds and is allowed. The impugned order of conviction and sentence under section 302 of IPC is set aside. The accused is acquitted of the charges framed against her and

is liable to be released forthwith, if not otherwise required.